

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18F-0866E

DELTA-MONTROSE ELECTRIC ASSOCIATION, Complainant

v.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., Respondent

**SAN LUIS VALLEY RURAL ELECTRIC COOPERATIVE, INC.'S
MOTION TO INTERVENE OR, IN THE ALTERNATIVE,
TO PARTICIPATE AS AN AMICUS CURIAE**

San Luis Valley Rural Electric Cooperative, Inc. (“SLVREC”), by and through its counsel, Hoskin Farina & Kampf, Professional Corporation, moves to intervene in this proceeding pursuant to Rule 1401 of the Colorado Public Utility Commission’s (“Commission”) Rules of Practice and Procedure (4 CCR 723-1:1401) or, if the Commission denies that motion, moves in the alternative to participate as an amicus curiae in this proceeding pursuant to Rule 1200(c) of the Commission’s Rules of Practice and Procedure (4 CCR 723-1:1200(c)) as follows:

1. Counsel has conferred with counsel for Delta-Montrose Electric Association (“DMEA”) and counsel for Tri-State Generation and Transmission Association, Inc. (“Tri-State”) regarding this motion. Tri-State does not oppose this motion. DMEA takes no position on the requested relief at this time, but reserves its right to respond.
2. SLVREC is a cooperative electric association and public utility that has been deregulated from Commission rate jurisdiction pursuant to C.R.S. § 40-9.5-103.

3. SLVREC is an electric cooperative association and a member-system of Tri-State, which is also a cooperative association.

4. On December 6, 2018, DMEA filed a Formal Complaint against Tri-State involving a contractual dispute between DMEA and Tri-State.

5. As with complainant DMEA, SLVREC is bound by the Bylaws of Tri-State as a member of Tri-State, and purchases wholesale electric service from Tri-State under a Wholesale Electric Services Contract presumably identical to that between DMEA and Tri-State. SLVREC and DMEA, along with Tri-State's other members, share the same contractual relationship to Tri-State.

6. While DMEA attempts to cast this action as a rate proceeding for which the Commission would arguably have jurisdiction under C.R.S. § 40-3-102, the subject of DMEA's Complaint is not "rates, charges and regulations to govern rates, charges and tariffs" of Tri-State, which by definition in this instance must involve charges for the supply of electric service. Rather, DMEA is complaining about a contractual term contained in the Tri-State Bylaws, which would only take effect if DMEA is no longer receiving wholesale electric service from Tri-State.

7. SLVREC has an interest in the proceeding because SLVREC's property interests including its contract with Tri-State, its membership interest in Tri-State and Tri-State's Bylaws as well as the proper forum for determining related disputes may be affected by the outcome of this proceeding.

8. Neither DMEA nor Tri-State can adequately represent SLVREC's interests regarding such matters as SLVREC's rights and interests, although similar, are different than Tri-State and DMEA's interests and may be affected in ways that could be different from the rights of DMEA and Tri-State.

9. Should the Commission decide it has jurisdiction in this case, it may render a decision affecting some of SLVREC's contract rights with Tri-State as well as affecting the proper venue for determination of those rights. Similarly, such an exercise of jurisdiction may also produce a decision by the Commission that affects SLVREC's membership rights and the proper forum for determination of those rights.

10. SLVREC desires the opportunity to address the Commission's lack of jurisdiction over these proceedings and whether DMEA's Complaint states a claim for relief. SLVREC's position in this regard may be useful to the Commission because SLVREC is uniquely situated to address both issues. Like DMEA, SLVREC is a Colorado cooperative electric association and public utility that has been deregulated from Commission jurisdiction pursuant to C.R.S. § 40-9.5-103. Unlike DMEA, SLVREC contends that the Commission does not have jurisdiction to resolve matters related to an exit fee charged by a nonprofit generation and transmission electric corporation to its constituent nonprofit distribution cooperative electric association members and that the exit fee is not subject to the statutory authority upon which DMEA's claims are predicated. Because SLVREC and DMEA are similarly situated but have opposing arguments as to the Commission's jurisdiction in the

matter, SLVREC is uniquely situated to provide evidence and argument that may be useful to the Commission.

11. Intervention by SLVREC will not unduly broaden the issues in this proceeding.

12. The nature and quantity of any evidence to be presented by SLVREC is not yet known; however, SLVREC will abide by the time limits for discovery and submission of testimony and exhibits and the submission of statements of position. By Decision No. C18-1177-I, DMEA and Tri-State will file a joint proposed procedural schedule no later than January 28, 2019. SLVREC will abide by the procedural schedule adopted by the Commission.

13. Intervention is timely. The deadline to intervene is January 9, 2019 based on the Order to Satisfy or Answer the Complaint that was issued in this Docket on December 10, 2018. Tri-State has been allowed by the Commission to file its Response to the Complaint by January 15, 2019, by Decision No. C18-1177-I.

14. SLVREC may file a Nondisclosure Agreement regarding confidential information and highly confidential information. SLVREC does not now intend to propound discovery requests to DMEA or Tri-State; however, based on information provided by DMEA or Tri-State to the Commission and to other parties, SLVREC may determine to propound discovery to DMEA or Tri-State related to such responses of either of them to discovery propounded by parties to the proceeding. SLVREC requests that DMEA and Tri-State provide SLVREC with a copy of any response to discovery made by any party.

15. In the event the Commission denies SLVREC's motion to intervene, SLVREC moves to participate as an amicus curiae in this proceeding pursuant to Rule 1200(c) of the Commission's Rules of Practice and Procedure (4 CCR 723-1:1200(c)). The grounds for SLVREC to participate as an amicus curiae are the same as the grounds supporting its motion to intervene.

16. SLVREC requests that notice of matters relating to this proceeding and copies of orders, testimony, exhibits, and all pleadings, discovery, and other communications be served upon the following:

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WHEREFORE, for the foregoing reasons, SLVREC respectfully requests the Commission to allow SLVREC to intervene in this proceeding, or if the Commission denies that request, to allow SLVREC to participate as an amicus curiae in this proceeding.

Respectfully submitted this 8th day of January, 2019.

HOSKIN FARINA & KAMPF
Professional Corporation

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2019, the foregoing document was served via electronic filing with the Commission and served on those parties shown on the Commission's Certificate of Service accompanying such filing.

s/ Angela Classen

Angela Classen